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ABSTRACT

The federal government's interest in gifted education is traced from the Education Amendments of 1969, and the effects of social forces, such as Sputnik, the "Great Society" ideal, and the economic requirements for trained, qualified, and creative personnel, is examined. Increased emphasis on gifted/talented education at the state level is noted, and the impact of judicial rulings is explored. Considered are the lack of standardization in definition and identification procedures and the need for culture free methods of identification. Teacher certification requirements for Alaska, Kansas, New Mexico, North Carolina, Ohio, Oklahoma, and Pennsylvania are described in an appendix. (CL)

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WHO SAYS HE'S GIFTED?

A LOOK AT THE PRESENT LEGAL STATUS OF GIFTED EDUCATION

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ABSTRACT

The report briefly traces the history of federal involvement in the area of gifted education beginning in 1969 and lists the federal definition of "gifted". It discusses the impact of increasing social conciousness toward exceptionality. State programs for gifted education are summarized in terms of state statutes, administrative policy, state plans, number of state personnel, existence of inservice programs for local districts, existence of courses at institutions of higher education in the state, number of children served, and amount of funding so as to identify state interest in gifted education. Possible legal problems in the area of gifted education arising from state provisions for public education are explored. Included in an appendix is a summary of teacher certification requirements for gifted education and the number of institutions in that state offering courses in gifted education for seven states.

WHO SAYS HE'S GIFTED?

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Sandra M. Abernathy

What kind of child does the term, gifted, conjure up in your mind? a bookworm? The child with a chemistry set, or the two children in the neighborhood - the one who draws so well and the other who plays the piano so beautifully? Did you also think of the kid whose house always looks like a junkyard because he is continually tearing into another car? Are you reminded of the class mimic or the kid who vied with the teacher for control of the class? What about the student who always had such weird answers - answers that made sense if anyone had time to listen to the explanations. Did you think of the local football or basketball hero?

Any of these individuals might be considered to be gifted. What is the present educational status of a 'gifted' individual? Have the gifted/talented been defined so that they can be identified? Are programs available for those identified? Are states equally interested in gifted education? What role has the federal government played in gifted education? Has gifted education become more important in the last ten years? Will gifted education become a regular part of school programs? These are some of the questions to be discussed in this report.

The Federal Government

The present national interest in gifted education could be considered to have begun with the Education Ammendments of 1969. A congressman from Illinois, John Erlenborn, impressed with his state's efforts in the area of gifted education, wanted the federal government to identify the needs of gifted/talented children, to ascertain what, if any, present federal assistance was being offered or could be utilized, and to recommend future federal policy in this area. Congress mandated a survey. The findings, called the Marland Report after the then United States Commissioner of Education, Sidney P. Marland, was presented to Congress in the fall of 1971. It recommended action by the federal government in promoting gifted/talented education through the establishment of an office for gifted/talented education within the United States Office of Education (USOE), and through encouragement of state programs and staff development grants for institutes and research using existing funding programs. The report also defined the group, gifted/talented, giving them status as an exceptional group in need of special education. Gifted/talented students were defined as follows:

> Gifted and talented children are those identified by professionally qualified persons and who by virtue of outstanding abilities are capable of high performance. These are children who require differientiated educational programs and services beyond those normally provided by the regular school program in order to realize their contribution to self and society.
>
> Children capable of high performance include those with demonstrated achievement and/or potential ability in any of the following areas: (a) general intellectual ability, (b) specific academic aptitude, (c) creative or productive thinking, (d) leadership ability, (e) visual and performing arts, (f) psychomotor. (Gallagher, 1979, p. 30)

The present definition is:

> For the purposes of this part, the term 'gifted and talented children' means children and whenever applicable, youth, who are identified at the preschool, elementary, or secondary level as possessing demonstrated or potential abilities that give evidence of high performance capability in areas such as intellectual, creative, specific academic, or leadership ability, or in the performing and visual arts, and who by reason thereof, require services or activities not ordinarily provided by the school. (Public Law 95-561)

As a result of the report, the Office of Gifted and Talented (OGT) was formed within the United States Office of Education. Its mission was to develop and implement a national policy - sans funds. Using the Marland report as a basis, OGT determined its priorities. These were to raise the national awareness of the need for gifted/talented education in the nation and to support the development of state expertise in the areas of student identification, program and staff development, and knowledge of ways to gain funding through existing programs.

Two organizations, National/State Leadership Training Institute on the Gifted and Talented (LTI) and Council for Exceptional Children, have been extremely influential in carrying out OGT's goals. The National/State Leadership Training Institute on the Gifted and Talented (LTI) was created in 1972 using funds from the Education Professions Development Act. Since its inception LTI, based in Ventura County, California, has held national and regional conferences and institutes, provided technical assistance, and has developed and disseminated information pertinent to all areas of gifted/talented education. The Council for Exceptional Children in Reston, Virginia, was officially designated the ERIC Clearinghouse on Handicapped and

Gifted Children in 1972. It had acted in that unofficial capacity for the preceeding three years. Its commission as an ERIC center, was to gather, evaluate, and disseminate information, and to sponsor needed analyses in the area of handicapped and gifted and talented education. Fifteen percent of the requests to the clearinghouse are for information in the area of gifted/talented.

Categorical funding for gifted/talented education began in 1975 through the Special Projects Act PL 93-380 Section 404. The main portion of the first year's $2.5 million went for grants to state education agencies. The rest went to local projects grants and model projects, personnel training, and information services. Research, per se, was not funded. (Jackson, 1979, p. 51)

In 1976 the Council of Exceptional Children was awarded a contract to develop, conduct, and report information gained from a national survey concerning the states' present status in gifted/talented education. The information was published in April, 1978. A portion of the publication was devoted to a comparison of the 1970 Marland Report with the present findings to determine what changes, if any, had been made by the states in this period of time. In 1970 21 states had some type of written policy for gifted/talented; in 1977 the figure had risen to 43. In 1970 24 states had gifted/talented state personnel; in 1977 the number of states was 41. In 1970 federal funding was non existent; in 1977 $5,600,687. federal dollars and $56,296,608. state dollars were spent specifically for gifted/talented programs. In 1970 the Marland report called for inservice for school personnel; in 1977 42 states reported conducting some

form of inservice and 177 institutions of higher education in 45 states had one or more courses concerning the education of gifted/talented.

The federal government has provided valuable support in the area of gifted/talented education to states by defining these children as a separate group and by helping to raise the general awareness of this special group. It has helped to provide additional information and impetus to those states already working in this area. The gap between the states who lead and the states who lag may be greater now than in 1970, but the number of states with no provisions for this group has diminished.

Social Forces

Without an increased awareness and interest in gifted/talented education by members in society, gifted education would not have received the attention it has, first from the states and then from the federal government. Nor would the states, in turn, have increased their efforts in this area. The increased interest in gifted/talented education is only part of the movement toward a more diverse society in which a greater tolerance is being displayed toward the atypical individual. Several factors have led to this present stage. Sputnik woke us up to the need for scientists and engineers, and "eggheads" received some positive recognition. Johnson's "Great Society" woke us up to the need for equal educational opportunities for many ethnic and economic segments in America. It also increased the awareness of the public to the diversity of cultures in the country and stimulated many to search for their cultural roots. The seventies have seen a

continuation in the social acceptance of cultural, ethnic, and other differences in society. Categorical education has continued, with the emphasis placed on handicapped groups and equal opportunities for the sexes. TV programs have tended to reflect this trend. Our economic and environmental problems again call for trained, qualified, creative personnal. Each of these factors, combined with the greater militancy of parents, has directly or indirectly helped the cause of gifted/talented education.

The States

As stated above, the current increase in emphasis on gifted/talented education has been mainly during the seventies. Some states have had a history of interest in gifted/talented education and have well- developed definitions, identification proceedures, certification requirements and programs. Other states, trying to remain currrent in the area of categorical education have added gifted/talented education to existing handicapped definitions. Sometimes the two make strange bedfellows. I consider Connecticut's definition to be well balanced.

> An "exceptional child" means a child who deviates either intellectually, physically, socially, or emotionally so markedly from normally expected growth and development patterns that he is or will be unable to progress effectively in a regular school program and needs a special class, special instruction or special services..."Children requiring special education" includes any exceptional child who (1) is mentally retarded, physically handicapped, socially and emotionally maladjusted, neurologically impaired, or suffering an identifiable learning disability which impedes his rate of development, which disability is amenable to correction or which rate of development may be improved by special education, or (2) has extraordinary learning ability or outstanding talent in the creative arts, the development of which requires programs or services beyond the level of those ordinarily provided in

regular school programs but which may be provided through special education as part of the public school program. (The Nation's Commitment, 1978 p. 43)

The relative importance of gifted/talented education at the state level can be indirectly assessed by looking for the existence of state statutes, administrative policy, state plans, number of state personnel, existence of inservice programs for local districts, existence of courses at higher institutions in the state, number of children served, and amount of funding. In 1977 27 states had statutes and administrative policy, 6 states had only statutes, 10 states had only administrative policy. 38 states defined the gifted/talented student; 30 states described identification proceedures; 18 states had an officially adopted state plan; 27 states had at least one full-time professional employed in this area; 42 states had sponsored inservice training that year; 45 states had at least one college or university that offered courses in gifted/talented education.

Of the 32 states who reported numbers of students served, only 2 states, California and North Carolina, reported serving at least 3% of the student population (the conservative estimate for the group according to the Marland Report). Seven states served 2% or more, and 12 reported serving 1% or more of their student population. Total funding reported ranged from $0. in Arkansas to $15,6700,000. in California (all but $100,000. being state funds). The per pupil expenditure ranged from $4./student (serving 2.8% of the population) in Minnesota to $480./student (serving 1.1% of the population) in Connecticut, excepting Idaho. Idaho had the greatest increase in allocation from 1976 to 1977 (895.8%) raising its expenditures from

$187./student in 1976 to $622./student in 1977, which brought its per student expenditure above Connecticut's. Connecticut had the lowest increase in expenditure (0.6%) in the nation between 1976 and 1977. The two states who served over 3% of their populations expended $79./student (California) and $209./student (North Carolina). North Carolina and California had the most state personnel with 3, and they also had the greatest number of colleges and universities offering courses in gifted/talented education, 12 and 13 respectively. (The Nation's Commitment , 1978) North Carolina also offers teacher certification for gifted through regular coursework or through a competency-based program Competency-Based Program, 1975). It is also offering "the nation's first free residential public high school for gifted students" as reported in the October 23, 1980 issue of Time Magazine. Gifted education is important in some states, and is becoming more important across the nation.

Legal Ramifications

The function of education belongs to the states by federal default. All states have accepted the responsibility and have enacted some type of legislation to provide free and equal education for all its citizens. It has only been recently that the terms "equal" and "all" have been successfully challenged in the courts by the disadvantaged - the poor and/or ethnic, cultural, and handicapped groups. Education through mainstreaming and/or differiental funding and programs have often been the result.

When the states commited themselves to provide an education for their citizens, they changed the legal concept of education in

their state from a privilege to a right. Through this action they lost the option of providing or withdrawing an education. Students have a right to an equal educational opportunity, so says the decision in Brown v Board of Education (1954). Education is a property right which cannot be withdrawn without due process, was the decision in Goss v Lopez (1975) and in Dixon v Alabama State Board of Education (1961).

Not only did the states relinquish the option for providing an education, they had also lost the ability to choose who would be educated because of the term, "all". In Pennsylvania Association for Retarded Children (PARC) v Commonwealth (1972), it was decided exceptional children have a right to equal educational opportunity when state statutes provide for a free public education for all. Exceptional students have the right to due process before placement and a right to an education, no matter the financial status of the state, it was decided in Mills v Baord of Education of the Disrtict of Columbia (1972).

How or what certain groups of students should be taught was also investigated through the courts. That school districts were mandated to provide affirmative educational relief to students whose special needs were not being met was decided in Lau v Nichols (1974) and Serna v Portales Municipal Schools (1974). School districts were not allowed to use discriminatory instruments in the placement of students in special programs if their use would result in a different porportion of that group of students in the program than was found in the total school population, it was decided in Hobson v Hansen (1967),

Diana v State Board of Education (1970), and Larry P. v Riles (1972). (School districts accepting federal funds were further circumscribed by Title VI of the Civil Rights Act of 1964. The acceptance of federal funds brought school district under federal jurisdiction.)

The above cases were brought to court because private citizens felt their rights were being violated by the state. Each of the cases involved an underpriviledged group - Blacks, Hispanics, poor, non-English speaking, or handicapped. However, it does not take a great deal of imagination to see the parent of a gifted child use these cases in an attempt to obtain an equal educational opportunity for his or her child.

In order to safeguard against possible lawsuits in this area, states need to take a close look at their policy for gifted/talented students, checking it for feasibility, internal consistancy, and lack of inadvertant discrimination. The state must be able to serve the defined population. Some states define the age range to be served as beginning at birth. Some extend the period to age 22. Other states limit gifted/talented education to those currently enrolled in school. Is a state capable of identifying gifted/talented students and providing an appropriate education from birth to age 21 or 22?

The definition and identification proceedures need to be checked for internal consistancy. Identification proceedures must be available for all factors listed in the gifted/talented definition. Identification instruments need to be throughly evaluated to insure that they are culture-free and will not inadvertently exclude children belonging to minority groups. One way to check this is to compare the

porportion of ethnic groups in the general school population and in the identified gifted/talented program. Programs need to be investigated to insure that identified students are being served and that they are receiving a differientated program commensurate with their specialized needs and in the least restrictive environment. (With a gifted/talented program, the restricted environment may be the regular classroom.)

Gifted education has become more important in our nation in the past ten years. With the heightened interest in people who can solve problems in economics, science, social areas, and the present tolerance for the atypical individual, with the heightened interest in categorical education expressed by both the federal and state governments, and with the concern shown by parents and the courts in pressing for equal educational opportunities for all based on need, hopefully the current cycle of gifted/talented interest will finally draw gifted/talented education into the mainstream of America's education.

APPENDIX A

Teacher Certification Requirements and

Institutions of Higher Learning Offering Coursework

For New Mexico and Other States

ALASKA: Teachers of gifted need only possess a teaching certificate, Type A (regular certificate) as distinguished from other special education teachers who need Type A certificate with appropriate endorsement. 1 institution of higher learning offered undergraduate coursework in gifted education in 1977.

KANSAS: 1) Valid Kansas teaching certificate, 2) one year's teaching experience, 3) 9 graduate hours in human growth and development and in tests and measurements, and 12 graduate hours in gifted education including credits or competency equivalent in nature and needs of gifted, planning for the gifted, and supervised practicum. 3 institutions of higher learning offered graduate coursework in gifted education in 1977.

NEW MEXICO: Professional certificate requires: 1) all prerequisites and requirements for general certification in special education, 2) 3 years teaching experience in special education, 3) completion of Master's degree or 30 hours graduate credit in planned program (no distinction between gifted education and other special education). 1 institution of higher learning offered graduate coursework in gifted education in 1977.

NORTH CAROLINA: 18 hours coursework, or completion of Competency-Based Program for Certification. 12 institutions of higher learning offered undergraduate and graduate coursework in gifted education in 1977.

OHIO: 1) Hold valid teaching certificate, 2) Coursework in psychology and education of the gifted, 3) Minimum of 2 years of teaching experience or specific preparation as a teacher of the gifted including student teaching in gifted program. 3 institutions of higher learning offered undergraduate and graduate coursework in gifted education in 1977.

OKLAHOMA: Special education certification in special field (no distinction between gifted education and other special education certification). 0 institutions of higher learning offered coursework in gifted education in 1977.

PENNSYLVANIA: Permanently certified in their special field of instruction and/or in special education with a master's degree or equivalent. 6 institutions of higher learning offered graduate coursework in gifted education in 1977.

APPENDIX B

TABLE OF CASES

Brown v Board of Education of Topeka, 347 U.S. 483 (1954).

Diana v State Board of Education of Calif., Civil No. C-70-37 RF (1970).

Dixon v Alabama State Board of Education, 294 F.2d 150 (1961).

Goss v Lopez, 419 U.S. 565 (1975).

Hobson v Hansen, 269 F. Supp. 401 (1967).

Larry P. v Riles, 502 F. 2d. 963 (1974)

Lau v Nichols, 483 F. 2d. 791 (1973).

Mills v Board of Education of District of Columbia, 348 F. Supp. 866 (1972).

Pennsylvania Association For Retarded Children (PARC) v Commonwealth of Pennsylvania, 334 F. Supp. 1259 (1972).

Serna v Portales Municipal Schools, 499 F. 2d. 1147 (1974).

BIBLIOGRAPHY

1. A Boarding School For Brains. Time. October 27, 1980, 116(17), 81.

2. A Guide for the Development of Education for the Gifted, Talented, and Creative Student. New Mexico State Department of Education, Santa Fe, NM. 1977.

3. A Plan For the Delivery of Special Education Services in New Mexico Part III: Regulations. New Mexico State Department of Education, Santa Fe, N. M. 1976.

4. Competency Based Program for Certification: Gifted and Talented. North Carolina State Department of Public Instruction. 1977. (ERIC Document Reproduction Service No. ED 105 684).

5. Education of Gifted and Talented Pupils K-12. California State Department of Education, Sacramento, Calif. 1979.

6. Federal Register Part IV. Department of Health, Education, and Welfare, Office of Education, Gifted and Talented Children's Education Program. June 25, 1979, 44, 37134.

7. Gallagher, James J. Chapter II. Issues in Education for the Gifted. In A. Harry Passow (Ed.), The Gifted and Talented: Their Education and Development. The Seventy-eighth Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press, 1979.

8. Garrett, John E. and Brazil, Nettye. Categories Used for Identification and Education of Exceptional Children. Exceptional Children. January 1979, 45, 291-2.

9. Gee, E. Gordon and Sperry, David J. Education Law and the Public Schools: A Compendium. Boston: Allyn and Bacon, Inc., 1978.

10. Gifted and Talented Pupil Program Guidelines for Implementing AB 1040, 1979. California State Dept of Education, Sacramento, Calif. 1980.

11. Gresson, Aaron D. and Carter, David G. Equal Educational Opportunity for the Gifted: In Search of a Legal Standard. NOLPE School Law Journal, April 1979, 6, 145-54.

12. Hensley, Gene and others. Questions and Answers: The Education of Exceptional Children Report #73. Education Commission of the States. Denver, Colorado. (ERIC Document Reproduction Service No. ED 115 057).

13. House Bill 492, State of Arkansas Acted on October 6, 1979.

14. Intermediate Unit Programs For the Gifted 1975-76. Bucks County Public Schools, Doylestown, Pa., 1975. (ERIC Document Reproduction Service No. ED 113 889)

15. Jackson, David M. Chapter III. The Emerging National and State Concern. In A. Harry Passow (Ed.), The Gifted and Talented: Their Education and Development. The Seventy-eighth Yearbook of the National Society For the Study of Education. Chicago: University of Chicago Press, 1979.

16. Laird, A. W. The Fifty States Educational Provisions for Gifted Children. The Gifted Child. Fall 1971, 15, 205-16.

17. Manual for Planning Special Education Programs for the Gifted. State Department of Education, Santa Fe, N. M., 1979.

18. Mitchell, Patricia Bruce and Erickson, Donald K. The Education of Gifted and Talented Children: A Status Report. Exceptional Children. September 1978, 45, 12-15.

19. Policies and Proceedures Manual for Special Education in Oklahoma. Oklahoma State Department of Education. 1980. (ERIC Document Reproduction Service No. ED 181 692).

20. Programs Standards for School Foundation Units for Gifted Programs. Ohio State Department of Education. 1975. (ERIC Document Reproduction Service No. ED 121 008).

21. Public Law 95-561 Section 902. 20 USC 3312. November 1, 1978.

22. Reutter Jr., E. Edmund and Hamilton, Robert R. The Law of Public Education. New York: The Foundation Press, Inc. 1976.

23. Rules Governing Programs and Services for Children With Special Needs. North Carolina State Department of Public Instruction. 1976. (ERIC Document Reproduction Service No. ED 119 440).

24. Silliman, Ben and Alexander, David. Legal and Ethical Considerations of School Placement for Exceptional Children. February 1976. (ERIC Document Reproduction Service No. ED 127 772).

25. Special Education Handbook. State of Alaska. 1977. (ERIC Document Reproduction Service No. ED 157 250).

26. Summary Analysis of State Laws for Gifted Children. Exceptional Children. March 1967, 35, 569-76.

27. The Nation's Commitment to the Education of Gifted and Talented Children and Youth: Summary of Findings From a 1977 Survey of States and Territories. Reston, Virginia: Council for Exceptional Children, April, 1978.

28. Truby, Roy, State Superintendent of Public Instruction. Resource Manual for Gifted/Talented Programs. Boise, Idaho. 1973.

29. Vassar, William G. Connecticut's State Plan for the Education of the Gifted and Talented: 1975-80. Working Draft. Connecticut State Department of Education. 1975. (ERIC Document Reproduction Service No. ED 115 064).

30. Zottel, Jeffery. Chapter II. State Provisions for Educating the Gifted and Talented. In A. Harry Passow (Ed.), The Gifted and Talented: Their Education and Development. The Seventy-eighth Yearbook of the National Society for the Study of Education. Chicago: University of Chicago Press, 1979.